EXHIBIT B

Allegiance, Cable & Wireless, ITC^DeltaCom, KMC Telecom, NewSouth, NuVox, Talk America, and XO
Opposition to Direct Case
WC Docket No. 02-304
October 24, 2002

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)
	)
Revisions By BellSouth	)
Telecommunications Inc. To Tariff	)
F.C.C. No. 1; Transmittal No. 635	)

PETITION TO REJECT OR, ALTERNATIVELY, TO SUSPEND AND INVESTIGATE

The Competitive Telecommunications Association; ITC^DeltaCom Communications, Inc.; KMC Telecom Holdings, Inc.; NuVox Communications, Inc.; and XO Communications, Inc. [hereinafter "Petitioners"], by their attorneys and pursuant to 47 C.F.R. §1.773, hereby petition the Commission to reject or, alternatively, to suspend and investigate the revisions to Section 2.4.1 of Tariff F.C.C. No. 1 filed by BellSouth Telecommunications, Inc. ("BellSouth") in Transmittal No. 635 on May 13, 2002 with an effective date of May 28, 2002. Each Petitioner is a BellSouth customer under this tariff, or has members who are BellSouth customers under this tariff, and therefore has a direct interest in these tariff revisions. The Petitioners have been advised that the Southeastern Competitive Carriers Association (SECCA) strongly supports the relief requested in this Petition.

These tariff revisions would give BellSouth complete and unfettered discretion to impose additional deposit requirements totaling many millions of dollars upon any or all of its interstate access customers even though such customers have paid all invoices submitted to them by BellSouth, sometimes for a period of many years. These tariff revisions should be rejected because they are facially unreasonable and discriminatory in violation of Sections 201(b) and 202(a) of the Communications Act, and because they violate the requirement in Section 61.2(a) that "all tariff publications must contain clear and explicit explanatory statements." The tariff provisions are vague, subjective, overbroad and, in some cases internally inconsistent. In addition, they would give BellSouth a ready-made tool for abusing its local exchange market power to the detriment of competition in the local and long distance markets in its region. Further, BellSouth has not provided the "substantial cause" necessary to justify unilateral changes to the material terms and conditions of long-term tariffed arrangements.

In the alternative, the Commission should exercise its full powers to suspend and investigate these tariff revisions. BellSouth's only rationale is the cryptic and unsupported statement that its bad debt losses have increased by 230% over the past year. If the Commission is not willing to reject these tariff revisions on their face, it should, at a minimum, suspend and investigate these tariff revisions to ensure that it has a sufficient factual basis to determine whether they are lawful. Permitting these revisions to take effect as filed by BellSouth will cause significant irreparable harm to numerous local carriers in BellSouth's region.

I. THE TARIFF REVISIONS GIVE BELLSOUTH UNCHECKED DISCRETION TO IMPOSE MONETARY PENALTIES ON ITS COMPETITORS IN VIOLATION OF SECTION 201(B) AND 202(A) OF THE COMMUNICATIONS ACT OF 1934.

The revisions to Section 2.4.1 of BellSouth's Tariff F.C.C. No. 1 would permit BellSouth to impose onerous deposit requirements upon its carrier customers – many of whom compete directly with BellSouth in the local exchange and long distance markets -- in violation of Sections 201(b) and 202(a) of the Communications Act of 1934, as well as Section 61.2(a) of the Commission's rules. 47 U.S.C. §§ 201(b), 202(a); 47 C.F.R. §61.2(a). Up until now, BellSouth has imposed deposit requirements only upon customers with no "established credit" or with "a proven history of late payments." *See* Section 2.4.1, Tariff F.C.C. No. 1, 1st Revised Page 2-21.

BellSouth has now revised this provision to give it unchecked discretion to impose a substantial new deposit requirement upon any existing customer. In particular, in the revised Section 2.4.1, BellSouth "reserves the right" to require a new cash security deposit "[i]f an existing Customer's credit worthiness decreases and/or if its gross monthly billing has increased beyond the level used to determine the initial security deposit." It should be noted that BellSouth has reserved the right to impose a new deposit requirement on any carrier that satisfies *either* criterion. The amount of the cash deposit may, in BellSouth's discretion, be in an amount equal to the customer's estimated two months' billing.

In effect, BellSouth has revised Section 2.4.1 so that it can impose a two-month cash deposit requirement upon its entire interstate access customer base, or upon selected carriers, in its sole discretion.[1] The only two listed criteria are so vague, subjective and overbroad as to impose no standards or discernible restraints upon BellSouth's conduct. For example, the first criterion is whether there has been a "decrease[]" in an existing customer's credit worthiness. If this tariff language is read literally, any decrease, no matter how transitory or immaterial, will entitle BellSouth to slap a two-month cash deposit requirement on a carrier customer. Further, the evaluation of a company's credit worthiness is hardly an exact science, but BellSouth reveals nothing about the data, calculations or analytic processes it will use (if indeed any at all) to determine whether a carrier's credit worthiness has "decrease[d]."[2] Nor does BellSouth specify

1 BellSouth's refusal to permit parties to satisfy the deposit requirement through standard commercial means other than cash, such as a letter of credit, also is unreasonable.

2 BellSouth's deliberate opacity in defining credit worthiness presents significant implementation problems. Subsection (A) states that a carrier will be refunded or credited its deposit once it "has established credit," but it is difficult to know when that has occurred in the context of an existing customer who is slapped with a new deposit obligation for an alleged decrease in its credit worthiness. How is the customer to know when it credit worthiness has increased sufficiently to remove the need for a deposit? As with everything else in this tariff, it must wait for BellSouth to make a unilateral decision based on non-transparent criteria and procedures.

the time period over which a carrier's credit worthiness will be measured, or the time period during which the customer must pay the deposit requirement. As a result, these tariff revisions would permit BellSouth, based solely on its unsupported perception of a slight transitory decrease in an access customer's credit worthiness due to general U.S. economic conditions, to impose a requirement on a customer that it pay in one day a two-month cash deposit requirement. As even BellSouth must candidly admit, the credit worthiness criterion imposes no restraint of any kind whatsoever upon BellSouth's ability to selectively impose significant monetary penalties upon its carrier customers – many of whom, including the petitioning carriers, compete with BellSouth in numerous local exchange markets -- and hence the tariff revisions are patently unreasonable and discriminatory in violation of Sections 201(b) and 202(a).

The second criterion fares no better. The revised tariff language states that BellSouth may impose a two-month cash deposit on any access customer whose "gross monthly billing" has increased since it first started taking service from BellSouth. Presumably, most if not all existing carrier-customers will qualify under this criterion from the outset, and hence could be hit with a two-month deposit requirement immediately at BellSouth's whim. Certainly, any carrier who has been a BellSouth customer for any significant period of time is likely to have experienced some growth in interstate access traffic, and hence would be subject to a significant monetary penalty at BellSouth's pleasure. Simply by increasing its access rates, BellSouth could increase a carrier's "gross monthly billing" and justify the imposition of a new deposit requirement. As a result, this criterion suffers from the same problems as the credit worthiness criterion, and it is therefore unlawful under Sections 201(b) and 202(a).

Also, there is no rational nexus between the second criterion and the imposition of a new deposit requirement by BellSouth on its existing customers. Because this criterion can serve as a stand-alone basis for imposing a deposit obligation on an existing customer, this criterion must stand or fall on its own merits. Assuming *arguendo* that a carrier's credit worthiness remains intact, the fact that a carrier's access gross monthly billings have grown over time does not in any way suggest that the carrier has less ability than before to pay its bills. To the contrary, if the carrier has an established history of paying its access bills for successively higher traffic volumes, the carrier's growth clearly is unrelated to any concerns about the carrier's ability to pay its invoices.

The second criterion also is inconsistent with other portions of these tariff revisions. In particular, Subsection (A) of the revised tariff provision entitles a carrier-customer to receive a refund or credit in the amount of its deposit should it establish a "one-year prompt payment record." Many carriers who would be subject to a new deposit requirement due to increased gross monthly billings already have a one-year prompt payment record, thereby creating an internal tariff contradiction as to whether BellSouth may or may not impose a new deposit requirement on those carriers.

As regards both criteria – credit worthiness and billings growth – the Petitioners strongly object to any tariff provision that permits BellSouth to impose a new deposit requirement upon *existing access customers* who have paid the access bills they have received from the ILEC. It bears emphasis that BellSouth's existing tariff provisions authorize deposit requirements only at the time a carrier first becomes an interstate access customer of BellSouth or if it develops a history of late payments. It is inherently unreasonable for BellSouth to reserve for itself the ability to impose an additional deposit requirement on carrier-customers who have proved their credit worthiness through months and often years of timely payments. While the possibility can never be ruled out that a carrier-customer with a good payment history may default on a future invoice,[3] this possibility by itself cannot justify an overbroad tariff provision permitting BellSouth to impose monetary penalties on numerous other carrier-customers who will not default. BellSouth should not be permitted to insulate itself from normal business risks by forcing its entire customer base – or , more likely, selected carrier-customers whom it desires to punish – to act as *de facto* insurers against the possibility that some BellSouth retail or access customer might not pay its invoice at some point in the future.

Significantly, the discretion that BellSouth affords itself to selectively punish competitors by imposing stiff monetary penalties on them, or to selectively reward competitors who cooperate with BellSouth by holding off on imposing such penalties, will severely undermine competitive conditions in local exchange markets in BellSouth's region. Further, BellSouth has recently obtained Section 271 interLATA authority in Georgia and Louisiana, and it may well seek similar authority in other states in its region. The new tariff provisions will enable BellSouth to undermine long distance competition in those in-region states for which it has Section 271 authority by selectively imposing burdensome deposit requirements on competing interexchange carriers. Particularly as more carriers offer bundled service packages to consumers as integrated services providers, BellSouth's ability to slap stiff monetary penalties on competitors anytime it wants to will constitute a significant entry barrier and undermine competitive market conditions.

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3 While BellSouth claims without support that its uncollectables due to bad debt increased 230% over the past year, *see* BellSouth Description and Justification ("BellSouth D&J") at 2, it does not claim that these uncollectables were in any way related to services provided under this tariff.

BellSouth has already removed any doubt that it plans to wield this deposit requirement as a club over competitive carriers. At the same time that BellSouth filed this tariff revision, it has been seeking to impose additional deposit requirements upon competitive LECs with whom it has interconnection agreements. For one CLEC operating in its region, BellSouth sent a letter unilataerally demanding the payment of a $10 million deposit even though BellSouth had neither revised its applicable tariffs nor negotiated the necessary amendment to the CLEC's interconnection agreement. In that case, BellSouth gave the CLEC only three weeks to raise a $10 million cash deposit requirement. For that same CLEC, BellSouth later indicated before the state commission that the amount of the deposit would be closer to $17 million. For another CLEC operating in its region, BellSouth sent a letter demanding the payment of a $7 million deposit in similar circumstances. BellSouth's punitive actions toward these two CLECs illustrate how it will use the FCC's tariffing process and the filed rate doctrine to harm competitors and undermine competition.

The Commission should not doubt the ability of BellSouth to harm its competitors through the selective imposition of hefty deposit requirements. This is a critical time in the development of local exchange competition. Many new entrants have already exited the market, and the remaining carriers face significant challenges to sustain entry in this market segment. In addition, capital markets are virtually closed to all competitive telecommunications carriers at this time, forcing new entrants to carefully guard and conserve their capital. To permit BellSouth to demand deposits of several million dollars, particularly on very short notice, can inflict significant damage on the business operations and even financial viability of new entrants. These deposits would represent a substantial portion of many CLECs' available cash and/or working capital, and it may be difficult for them to raise the cash necessary to pay the deposit on the short notice required by BellSouth consistent with the covenants governing their credit facilities. Thus, a competitive carrier may be faced with the Hobson's choice of jeopardizing its continued access to working capital by paying the deposit, or being subject to higher rates or the loss of its BellSouth-provided Special Access arrangements should it fail to pay the deposit.

Further, should a carrier seek to avoid this Hobson's choice by obtaining the funds necessary to pay BellSouth's deposit by delaying payments owed to an underlying competitive wholesale provider, BellSouth's deposit requirement could have a domino effect by forcing the wholesale carrier (who may not even be a BellSouth customer) to miss revenue commitments in violation of the covenants of its own credit facilities. In short, the Commission should not doubt that BellSouth can and will use this deposit requirement to inflict significant damage upon its in-region competitors.

II. THE TARIFF REVISIONS VIOLATE THE "SUBSTANTIAL CAUSE" TEST

It is established Commission precedent that a telecommunications carrier, such as BellSouth, may not make unilateral and material revisions to a tariffed long-term service arrangement unless it first demonstrates "substantial cause" for the revisions. *E.g., RCA American Communications, Inc.*, 84 FCC 2d 353, 358 (1980); *id.*, 86 FCC 2d 1197, 1201 (1981). 94 FCC 2d 1338, 1340 (1983). Under that doctrine, the Commission will closely scrutinize the carrier's explanation of the reasons for the change, while also taking into account the reliance interest of the customers on their long-term arrangement with the carrier. The Commission will examine all relevant circumstances on a case-by-case basis to determine whether the carrier has demonstrated "substantial cause" for modifying the long-term tariff arrangements.

The substantial cause test governs these tariff revisions because they would apply to tariffed long-term arrangements. BellSouth's only rationale is that its "un-collectables due to bad debt increased 230% during year 2001." BellSouth D&J at 2. This unsupported statement is a patently insufficient justification. BellSouth does not even tie the alleged increased in bad debt to services provided under this tariff. Nor is BellSouth's proposal– in effect, making every customer subject to a significantly higher cash deposit requirement – tailored to the problem it has identified. BellSouth has overreacted to the problem of increased bad debt expense from specific customers by revising its tariff to enable it to require its entire interstate access customer base to pay significant new cash deposits.

Moreover, BellSouth's customers have a strong reliance interest in not being saddled with additional deposit requirements even though they have paid all of their BellSouth interstate access invoices, sometimes for many years. The reason customers enter into long-term arrangements with BellSouth is so they will know with certainty and in advance all the material terms and conditions of the service arrangement for a specified period of time. That reliance interest is particularly strong today given the downturn in the telecommunications industry and closed capital markets. It would undermine these carriers' legitimate reliance-backed expectations to permit BellSouth to create a new tariff mechanism to selectively impose millions of dollars in new cash deposit requirements upon competing carriers.

Effectively conceding that it cannot satisfy the "substantial cause" standard, BellSouth inserted Subsections (B) and (C) into its tariff revisions to give the customers of long-term arrangements the choice between accepting the new deposit requirements under such arrangements or shifting to "normal month to month rates" without early termination penalties. BellSouth's response is insufficient for at least two reasons. *First,* any customer who does not wish to accept the new deposit requirement should be given a full "fresh look" opportunity to shift to another carrier or to move to BellSouth's month to month rates. If it can find an alternative supplier, the customer should not be forced to subscribe to BellSouth's month-to-month service for any period of time.

Second, even a full "fresh look" opportunity does not represent an adequate solution here. There are few if any facilities-based alternatives to BellSouth's Special Access service arrangements within the BellSouth region. This is particularly true in the second- and third-tier cities within BellSouth's region, where it is not unusual for BellSouth to be the only carrier offering the Special Access services needed by new entrants to compete effectively. Hence, giving a customer the opportunity to shift without penalty to a new carrier when there are no alternative carriers is an obviously inadequate solution to the problem created by BellSouth's tariff revisions. As a result, BellSouth cannot satisfy the "substantial cause" standard and the tariff revisions must be rejected or, alternatively, suspended and investigated.

Conclusion

For the foregoing reasons, the Commission should reject the BellSouth tariffs revisions as unlawful or, alternatively, exercise its full authority to suspend and investigate those revisions.

Respectfully submitted,

By: ______________________

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Dated: May 20, 2002

CERTIFICATE OF SERVICE

I, Theresa A. Baum, hereby certify that on this 20th day of May, 2002, I served copies of the Petition to Reject, or Alternatively, to Suspend and Investigate of Competitive Telecommunications Association, ITC^DeltaCom Communications, Inc., KMC Telecom Holdings, Inc., NuVox Communications, Inc., and XO Communications, Inc. by hand delivery upon the following:

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